THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :08.02.2007

+ **WP (C) 895/2007 & CM No. 1552/2007**

KRITI SISODIA THROUGH HER GUARDIAN/ FATHER SHRI ANIL KUMAR SISODIA ...Petitioner

- versus -

DIRECTORATE OF EDUCATION & ANOTHER ...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Ranjan Kumar.
For the Respondent No.1 : Mr S Sirish Kumar with Mr Manish Shukla and Mr Rabindernath.
For the Respondent No.2 : Mr Romy Chacko and Mr Girish Pandey.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)
CM No. 1553/2007

Allowed subject to all just exceptions.

WP (C) 895/2007 & CM.No. 1552/2007

1. Rule.

2. With the consent of the parties, this petition is taken up for disposal.

3. The petitioner (Kriti Sisodia) has filed this petition through her guardian/father Shri Anil Kumar Sisodia seeking admission to the lower KG class of in Montfort Senior Secondary School (Respondent No.2) (hereinafter referred to as the Montfort School). The contention raised on behalf of the petitioner is that the petitioner was denied admission to the school by employing its own criteria of admission and not following the recommendation of the Ganguly Committee. The contention of the learned counsel for the petitioner is that this would be in clear violation of the directions given by a Division Bench of this court in LPA 196/2004 which stipulated that, for the academic session 2007-2008, admissions in schools would be governed by the recommendations of the Ganguly Committee. A copy of the order dated 17.10.2006 passed in LPA 196/2004 is placed on record as annexure P-1. The relevant portion of the order dated 17.10.2006 reads as under:

> "Counsel appearing for the various parties pray for some time to go through the report. We make it clear that as an experimental basis we would like the recommendations of the Committee to be given a trial for the next year nursery admission. If there are other suggestions they may also be given to the Court."

The above order was followed by an order dated 08.12.2006 passed by the Division Bench in the same LPA 196/2004. The relevant portion of the order dated 8.12.2006 reads as under:

> "..... In our opinion, it will be appropriate that for nursery admissions for the coming academic year, the guidelines which were framed by the Committee could

> be given a trial, on an experimental basis. We make it clear that this is only a stop gap arrangement, made to tide over the present situation which remains fluid, till all the parties concerned address the Court on the recommendations given by the Committee, by filing their suggestions....."

4. According to the learned counsel appearing on behalf of the petitioner, these two orders passed by the Division Bench in LPA 196/2004 make it abundantly clear that the Ganguly Committee Recommendations have to be applied to nursery/lower KG admissions by schools in Delhi. Continuing with his submissions, the learned counsel pointed out that, as per the Ganguly Committee Recommendations, weightage is to be given for 7 different categories. The categories being (1) Neighbourhood Schools; (2) sibling categories; (3) alumni category; (4) Children with special needs; (5) Girl child;

(6) Educational qualifications of parents and (7) School specific criteria. As per the recommendations of the Committee, it is apparent that the Committee had decided to device a method and assigned criteria by which each applicant can be assessed on a scale by giving weightage points under the different heads/categories referred to above. It was felt by the Ganguly Committee that since weightage points would be clearly indicated, the applicant could himself/herself do the marking and count the total before handing the form to the school. The school could then display the entire list along with cut off points in a descending order of the weightage points. Parents would, according

to the Committee, find the exercise completely transparent inasmuch as those who secured admission would know how they have got it and those who were not able to get admission would also know the reasons for the same. On the basis of these recommendations a suggested form, indicating the weightage for each category, was given by the Committee. The same reads as under:

Sl. No.	***Criteria***	***Specifications***	***Range of Points***	***Put a tick( ) mark at the appropriate place***	
1	Neighbourhood	0-3 km	20	☐	☐
		Above 3 and below 5 km	16	☐	☐
		Above 5 and below 8 km	12	☐	☐
		Above 8 and below 10 km	08	☐	☐
		Above 10 km	No weightage		
2.	Sibling		20	☐	☐
3.	Alumni	Father	05	☐	☐
		Mother	05	☐	☐
4.	Any child with special needs	Child with special needs who can be mainstreamed under inclusive education	05	☐	☐
			Mother / Father		

Sl. No.	*Criteria*	*Specifications*	*Range of Points*		*Put a tick( ) mark at the appropriate place*	
5.	Education Qualifications	Post-graduation which includes professional qualifications	10	10	☐	☐
		Graduation	08	08	☐	☐
		Sr. Secondary	06	06	☐	☐
		Class X	04	04	☐	☐
6.	Girl Child		05		☐	☐
7.	Any other parameters which the school may like to fix as per their needs/requirements		20		☐	☐

Total Points: ☐ ☐ ☐

5. The learned counsel for the petitioner submits that Montfort School, instead of applying the aforesaid criteria of weightage, applied its own criteria for admission and did not follow the Ganguly recommendations as directed by the Division Bench of this court. He points out that the criteria followed by the Montfort school and the relative weightage given to each category is given in annexure P3 at page 21, the relative portion reads as under:

> "4. The criteria for short listing students from among 2200 and more candidates for possible admission is scheduled here below :

Once they are short listed individual will be given time to produce original documents and credentials to ensure that the points allotted to each is in order before arriving at a final decision.

1. Proximity :- First k.m. from the school gates -20 points
   Second k.m. - 15 points
   Third k.m. - 10 points
   Fourth k.m. - 7 points
   Fifth and above – 5 points.

2. Parent education

   Postgraduate/or above/Professionals Degree–7.5+7.5
   Graduates – 6 + 6
   Below Graduation – 5 + 5
3. Other heads are self explanatory.
4. Sibling – 20
5. Father – Alumni – 05
   Mother – Alumni - 05
6. Backward classes / Weaker Section – 05
7. Police, Paramilitary, Defence, etc. - 05
8. Single parent – 05
9. Physically challenged – 05
10. Student from Montfort, Shalimar Bagh – 10
11. Girl child – 05.

Total – 100 points"

6. According to the learned counsel for the petitioner the points of difference between the criteria adopted by Montfort school and those recommended by the Ganguly Committee, insofar as they relate to the petitioner, are only two and these two pertain to the neighbourhood / proximity criterion and the education qualification/parents education criterion. With regard to the neighbourhood criterion, 20 points are awarded under the Ganguly Committee Recommendations if the applicant resides within 3 km radius from the school whereas the criterion prescribed by the school is more stringent and

it provides 20 points for the applicant residing within 1 km radius of the school gate. Therefore, according to the learned counsel for the petitioner, a different criterion is prescribed by the school to that recommended by the Ganguly Committee and this would be a violation of the directions passed by the Division Bench. He submits that the applicant does not reside within 1 km radius of the school, but the applicant resides within 3 km of the school. If the Ganguly Committee recommendation was taken into account then the applicant would have got full 20 points whereas going by the school recommendation, she got only 10 points. It may be clarified that the exact distance at which the applicant resides from the school is also in dispute as the learned counsel for the school submitted that, in point of fact, the applicant resides between 4 and 5 km from the school and, therefore, she would only have been entitled to 7 points.

7. The second point of difference pertains to the category- "education qualification/parents education". The learned counsel for the petitioner submitted that while the Ganguly Committee recommended ten points for each parent with postgraduate and professional qualification the school has prescribed only 7.5 points for each parent under the same category. In respect of graduates, the Ganguly Committee recommendation is of 8 points for each parent whereas the school has recommended 6 points for each parent and so on. Therefore, according to the learned counsel for the petitioner, a lower

weightage was being granted by the school for education qualification than that recommended by the Ganguly committee. It is the case of the petitioner that had the Ganguly Committee been adopted in *toto* then the petitioner would have achieved 50 points. The cut-off point specified by the school is 40.5 and, therefore, according to the learned counsel for the petitioner, the petitioner would have been eligible for admission to the Lower KG class. The learned counsel for the respondent, however, controverted the factum of the petitioner attaining 50 points even as per the Ganguly Committee. According to him, the petitioner would, even if the Ganguly committee is followed strictly, be entitled to 40 points.

8. The main controversy in the present petition is whether the Ganguly Committee recommendations are to be followed or not by the respondent No.2 (Montfort School). It is the contention of the petitioner that the school must follow the Ganguly Committee Recommendations in view of the explicit directions given by the Division Bench in LPA 196/2004. He submits that Montfort school is also a party in those proceedings. The learned counsel for the Respondent No.2 (Montfort School), however, submits that even as per the Ganguly Committee Recommendations, the school is excluded from the aforesaid criteria of admission. He made pointed references to paragraphs 4.7 and 5.8 which read as under:

> "4.7. School Specific Criteria.

The framework for admission process should have an inbuilt mechanism for flexibility to enable each school to adapt it according to its context and local requirements. Without such a provision the admission procedure may end up as a strait jacket, becoming self-defeating and counter productive. Schools, as responsible partners with parents over an extended period of 12-14 years, should have the freedom to specify their own philosophy, value systems, specific needs and then decide on certain parameters for admission. However schools have to fix such parameters and declare them on their website and notice Board and print them in their prospectus and registration from. It will enable parents to fill in the relevant details in the registration forms under this category besides making the process completely transparent. This will also help the parents to make an appropriate choice of school for their children. It would be advisable for schools to identify one or more criteria under this section and demarcate weightage for each. An illustrative list of examples has been provided in the section dealing with `admission procedure'. Schools may add to this list or change the criteria according to their needs and requirement. They may also allocate weightage for children of underprivileged section, as mentioned in the preceding section.

There is a wide variety of schools set up in Delhi, each with its own specific characteristics, obligations and client groups. Thus some schools cater to those from the armed forces and have the mandate to provide admission to that category of children. It will not be fair to make these school change their admission priorities completely since they have specific obligations. These schools can give all the weightage under school specific criteria to children of parents who they have been mandated to serve in the first place. So in the case of this category of schools the weightage need not be further broken down under more than one parameter as has been recommended for other schools.

There are also schools established and run by religious or linguistic minorities under Article 30(1) of the Constitution. The freedom to administer and, in this instance,

to admit children of the minority to the school, remains safeguarded." (underlining added)

"5.8 Special Category Schools

There are schools that are catering mainly to the educational needs of the children of armed forces and paramilitary forces. Such schools will follow the policy norms criteria laid down for admission of the children of the personnel whom they are serving now. For the remaining general category, they will follow the above-mentioned point system. For minority schools established under Article 30(1) of the Constitution, the freedom to administer and admit children remains safeguarded. "

(underlining added)

With particular reference to the last sentence of paragraph 5.8 quoted above, the learned counsel for the respondent No2 (school) submitted that minority schools established under Article 30(1) of the Constitution have been given freedom to administer and admit children as the Ganguly Committee recommendations also state that their rights remain safeguarded.

9. Considering the arguments advanced by the counsel for the parties, the only issue that needs to be decided in the present case is whether the criteria specified in the Ganguly Committee recommendations for giving weightage to the various categories has to be followed by Montfort School or not. In view of the directions of the Division Bench in LPA 196/2004, the schools are required to follow the same for the academic year 2007 on an experimental basis. But, does this extend to minority schools. The rights of minority institutions are governed by Articles 29 and 30 of the Constitution which read as under:

"29. Protection of Interests of minorities. - (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. Right of minorities to establish and administer educational institutions. - (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[1][(A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

There is no dispute that the respondent No.2 is an unaided minority Institution.

And, insofar as unaided minority institutions are concerned, the Supreme Court, in a recent decision in the case of ***P.A. Inamdar and others v State of Maharashtra and others : (2005) 6 SCC 537,*** held as under:

" 133. So far as the minority unaided institutions are concerned to admit students being one of the components of "the right to establish and administer an institution", the State

1 Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec.4 (w.e.f.20-6-1979).

cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom."

In the same judgment it is also observed as under:

> "118. [1]Pai Foundation is unanimous on the view that the right to establish and administer an institution, the phrase as employed in Article 30(1) of the Constitution, comprises of the following rights : (a) to admit students; (b) to set up a reasonable fee structure; (c) to constitute a governing body; (d) to appoint staff (teaching and non-teaching); and (e) to take action if there is dereliction of duty on the part of any of the employees. (Para 50)
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> 119. A minority educational institution may choose not to take any aid from the State and may also not seek any recognition or affiliation. It may be imparting such instructions and may have students learning such knowledge that do not stand in need of any recognition. Such institutions would be those where instructions are imparted for the sake of instructions and learning is only for the sake of learning and acquiring knowledge. Obviously, such institutions would fall in the category of those who would exercise their right under the protection and privilege conferred by Article 30(1) "to their hearts' content" unhampered by any restrictions excepting those which are in national interest based on considerations such as public safety, national security and national integrity or are aimed at preventing exploitation of students or the teaching community. Such institutions cannot indulge in any activity which is violative of any law of the land.
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> 120. They are free to admit all students of their own minority community if they so choose to do. (para 145, Pai Foundation[2])"

10. The position in law is, therefore, absolutely clear that the unaided minority institutions have the complete freedom insofar as the procedure to be adopted for admissions are concerned. This is, of course, subject to the larger

1 T.M.A. Pai Foundation v State of Karnataka (2002) 8 SCC 481
2 T.M.A. Pai Foundation v State of Karnataka, (2002) 8 SCC 481.

interest of public safety, national security and national integrity which have been referred to in the Supreme Court decision above. It is, therefore, clear that the Ganguly Committee was alive to the situation and specifically provided in paragraph 5.8 that the rights of minority schools established under Article 30(1) of the Constitution to have the freedom to administer and admit children remain safeguarded. The Committee, therefore, consciously, in view of the Constitutional mandate, did not interfere with the admission procedure to be adopted by such schools.

11. A submission was made by the learned counsel for the petitioner that the exception granted to such a minority school was only with respect to and limited to category No.7, that is, with respect to School Specific Criteria and was, consequently, limited only to 20 points. Therefore, according to him, as in the case of the schools for children of persons belonging to the armed forces, the school could give full 20 points for such persons under this category, minority schools could, at best, give 20 points under this category to the applicants from the minority community. According to the learned counsel for the petitioner, this is what is meant by the last sub-paragraph of paragraph 4.7 of the recommendations also. I am unable to agree with the learned counsel for the petitioner. A reading of paragraph 4.7 makes it clear that while schools which cater to those from the armed forces have been given liberty to give full weightage for children of parents serving in the armed forces. Under the school

specific criteria, insofar as the minority schools are concerned, their rights have been clearly safeguarded not only with regard to admitting children of the minority community but also other children in general. This is further buttressed by the contents of 5.8 which are quite explicit. And, in any event, this is the law as declared by the Supreme Court in ***P.A. Inamdar (****supra)*. Unaided minority schools are, therefore, not covered by the Ganguly Committee Recommendations. In these circumstances, the writ petition must fail. There shall be no order as to costs.

BADAR DURREZ AHMED
(JUDGE)

February 08, 2007
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